IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 269 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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RAJHANS SCREEN PRINTERS - Appellant(s)
Versus
REGIONAL DIRECTOR - Defendant(s)

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Appearance :

MR SI NANAVATI for Appellant(s) : 1,
MR HEMANT S SHAH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged the judgement and order dated 22.11.1982 passed by the Employees' Insurance Court at Ahmedabad in Application E.S.I. No. 68 of 1976 whereby the said application was dismissed.

2. The short facts of the case are that the applicant is a partnership firm having its establishment at Kuvadava Road, Rajkot, wherein it is carrying on the work of hand-screen printing. The original opponent No. 2 visited the establishment of

the original applicant and by misrepresentation of the fact obtained the signature of one Shri Manharlal Prabhulal, the partner of the original applicant firm. The said partner Shri Manharlal signed the form stating that the establishment of the original applicant was employing more than 20 persons and it was using power.

2.1 However, according to the original applicant firm had never employed more than nineteen persons on any working day and that it has never used electric power or any power as contemplated under the Act for the purposes of manufacturing process. The original opponent issued notice dated 2nd November 1972 claiming contribution. The original applicant resisted the same informing the original opponent that the original applicant is not covered under the Act. The original applicant therefore filed application E.S.I. No. 68/76 in the Employees' Insurance Court in Ahmedabad. The original opponent filed written statement at Ex. 9. It denied the various allegations and averments made in the application and stated that the original applicant's firm has been treated as covered with the effect from

2.12.1968 on the basis of the report of the Insurance Inspector. Ultimately the aforesaid application came to be dismissed.

3. Learned advocate for the appellant has relied upon sub section 12 of the Employees' State Insurance Act, 1948 which is reproduced as under:

> “factory” means any premises including the precincts thereof-
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> (a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or
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> (b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on.
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> but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed;

3.1 He further submitted that the trial court has miserably failed to properly construe the documentary as well as oral evidence envisaged and adduced before it by th appellant. He further submitted that one of the partners of the appellant firm viz. Shri

Manharlal was examined at Ex. 15. It was categorically deposed to by Shri Manharlal that he filled in the form 0.1 because of the misrepresentation of the insurance inspector and he did not at any point of time mention that the firm has employed more than 19 persons.

4. Mr. Shah, learned advocate for the respondent has supported the order of the authority and contended that the order of the authority is just and proper.

5. Heard. I have gone through the judgement of the trial court. The relevant observation of the insurance court is as under:

> “The applicant has not produced the Rojmel or any other documents to substantiate the genuineness of the pay registers and muster rolls produced when they were not admitted and the Inspector had stated that he had initialed pay registers and muster rolls to show that his report was false as he had stated very clearly in his report also that 22 persons worked as per pay register for full month of December, 1968 and only 13 persons names fined mention in the muster roll of December, 1968.”

The Court has not accepted the case of the

appellant that Exh. 16 was filled in by the applicant's partner under inducement or misrepresentation. The evidence of Mr. Sharma read with Exh. 16 clearly shows that the applicant in December 1968 was covered under the provision of the Factories Act. Therefore, the appellant will have to pay contribution under E.S.I. Act.

6. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter.

7. In view of the above finding I am of the view that the Trial Court has not committed any error in passing the impugned order. I am in complete agreement with the reasonings adopted and the findings arrived at by the Trial Court. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*